IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4540 of 2001

to

FIRST APPEALNo 4545 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

VALKUBHAI VISAMANBHAI

Appearance:

1. First Appeal No. 4540 of 2001

MR. S.P. SEN, GOVERNMENT PLEADER for Petitioner No. 1

MR YOGESH S LAKHANI WITH MR. PRASHANT MANKAD

for Respondent No. 1

MR. HEMANT MUNSHAW for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA
and

MR.JUSTICE N.G.NANDI

Date of decision: 28/01/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. All these appeals are arising out of the common judgment & award dated 20-2-2001 passed by Learned Assistant Judge, Amreli, in Land Reference Cases No. 48 to 54 of 1999 (Main Land Reference Case No. 51 of 1999). All these appeals are admitted on 24-10-2001. All these appeals are heard and disposed of by this common judgment & order as they are arising out of the impugned common judgment & award dated 20-2-2001 passed by Learned Assistant Judge, Amreli.

2. Learned Assistant Judge by his impugned common judgment & award dated 20-2-2001, out of seven Reference Cases No. 48 to 54 of 1999, partly allowed 5 Reference Cases, except Land Reference Case Nos. 51 and 52 of 1999. While passing the award Learned Judge has mainly relied on the extracts of Village Form Nos. 7/12. At the time of hearing of these appeals, learned AGP Shri. Sen for the appellant had submitted that, there was variance between copies of the extracts of Village Form No. 7/12 produced by claimants before the Special Land Acquisition Officer and the Reference Court. He had shown the original diary of 7/12 Village Form Register and sought permission to produce the same by way of an additional evidence under provisions of Order-41 Rule-27 (b) CPC. Accordingly oral permission was granted. Thereafter, by way of Civil Applications No. 651 to 656 of 2002 have been filed in all these appeals with a prayer to permit them to produce on record copies of Village Forms No. 7/12 available there on record of Land Acquisition Proceedings and also to produce copies of Village Forms No. 7/12 of lands of surrounding areas. Copy of said civil applications were served upon learned counsel Shri. Yogesh Lakhani appearing for respondents-claimants and Shri. Munshaw for Executive Engineer, Panchayat Irrigation, Amreli.

3. Having regard to the facts & circumstances of the case Mr. Lakhani, learned counsel appearing for the claimants did not object to the production of those Village Forms No. 7/12 as additional evidence in all these reference cases. Shri. Munshaw supported production of the same, on behalf of Executive Engineer, Panchayat Irrigation, Amreli.

4. Once production of Village Forms No. 7/12 was

allowed to be produced as an additional evidence, it was agreed by all learned counsel for the parties that, the impugned common judgment & award dated 20-2-2001 be quashed and set aside and the matters be remanded to Learned Assistant Judge, Amreli, with a direction to permit the parties to lead additional oral documentary evidence, confined to Village Forms No. 7/12 produced by way of additional evidence before this Court, and evidence if any, by the claimants to this limited extent and to decide all the Reference Cases afresh, in accordance with law.

The above prayer of the learned counsel appearing for the parties is granted.

In view of the above common judgment & award dated 20-2-2001 passed by Learned Assistant Judge, Amreli, in Land Reference Case Nos. 48 to 54 of 1999 is hereby set aside and quashed and the Land Reference Cases are remanded to the trial Court for disposal, in accordance with law, after giving opportunity to the State to lead additional evidence, oral documentary in the form of Village Form No. 7/12, with an opportunity to the claimants to lead oral documentary evidence restricted / confined to the additional evidence in the form of Village Form No. 7/12 above.

In the instant case all the parties shall remain personally present before Learned Assistant Judge, Amreli on 4-3-2002. On that day, Learned Judge shall fix the date for recording/adducing additional evidence to the extent pointed out above and decide the Reference Cases afresh in accordance with law, as early as possible, preferably on/or before 10th May 2002.

5. In view of the aforesaid observations and directions all these appeals are allowed accordingly. No order as to costs.

Dt: 28-1-2002 (B.J. Shethna, J)

(N.G. Nandi, J)

/vgn